

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 20-1

May 26, 2020

Petition of the State 911 Department for Approval of Fiscal Year 2020 Expenditures, Fiscal Year 2021 Development Grant Amount.

FINAL ORDER

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I. INTRODUCTION AND PROCEDURAL HISTORY

On February 25, 2020, the State 911 Department (“911 Department”) petitioned the Department of Telecommunications and Cable (“DTC”) for approval of increases to certain budgetary items, as outlined by statutory requirements. Specifically, the 911 Department requests approval for increases over the prior fiscal year for: (1) projected Fiscal Year (“FY”) 2020 expenditures and (2) FY2021 Public Safety Answering Point (“PSAP”) Regional Development Grant (“Development Grant”) amount. *See* Petition of the State 911 Dep’t for Approval of FY2020 Expenditures, FY2021 Dev. Grant Amount (“Petition”). The DTC has 90 days to review and issue a final decision on the Petition before these requests are deemed approved. *See* G.L. c. 6A, §§ 18B(i)(5), 18H(c).

The DTC issued its first set of Information Requests (“IRs”) to the 911 Department on March 23, 2020. First Set of Info. Requests of the Dep’t of Telecomms. & Cable to the State 911 Dep’t (Mar. 23, 2020). The 911 Department filed its responses on April 2, 2010. Responses to First Set of Info. Requests of the Dep’t of Telecomms. & Cable to the State 911 Dep’t (Apr. 2, 2020) (“DTC IR 1-1 through DTC IR 1-19”). On April 9, 2020, the DTC conducted an evidentiary hearing via teleconference on these matters. *See generally* Transcript of Record (“Tr.”). The DTC afforded the public the opportunity to submit written comment on the Petition. The public received notice of this option through the combination of newspaper publication of the proceeding in the *Boston Globe* on March 12, 2020, a Notice Regarding Hearing the DTC issued in this proceeding on March 23, 2020, and posted on the DTC’s website, and a posting of the Notice on the door of the DTC’s building at 1000 Washington Street in Boston on the day of the hearing. The DTC received no public comment.

On March 24, 2020, the DTC received a Notice of Intervention and Appearance from the Office of the Attorney General. At the evidentiary hearing, the DTC recognized the Attorney General's intervention. *See* Tr. at 4. The Attorney General submitted IRs to the 911 Department prior the hearing and record requests ("RRs") during the hearing. *See generally* Attorney General's IRs and Attorney General's RRs. The 911 Department submitted its responses to the Attorney General's IRs and RRs on April 8, and April 23, 2020, respectively. Responses to First Set of Info. Requests of the Att'y Gen. to the State 911 Dep't (Apr. 8, 2020) ("AG IR 1-1 through AG IR 1-8"); Responses to Record Requests of the Att'y Gen. to the State 911 Dep't (Apr. 23, 2020) ("AG RR-1 through AG RR-3"). The Attorney General submitted comments on the Petition on May 1, 2020.

On April 23, 2020, the 911 Department responded to six RRs the DTC issued at the evidentiary hearing. Responses to Record Requests of the Dep't of Telecomms. & Cable to the State 911 Dep't (Apr. 23, 2020) ("DTC RR-1 through DTC RR-6"). The DTC then issued Supplemental RRs on April 29 that the 911 Department responded to on May 6. In this Order, the DTC approves the 911 Department's projected FY2020 expenditures, and approves the FY2021 Development Grant amount.¹ In addition, the DTC discusses the stability of the Disability Access/911 Service Surcharge ("surcharge") and the condition of the Enhanced 911 Fund ("Fund").

II. ANALYSIS AND FINDINGS

A. Standard of Review

¹ The 911 Department also requested that the DTC consider the Petition as satisfying for FY2020 the requirement under G.L. c. 6A, § 18H(b) that the 911 Department report annually to the DTC on the financial condition of the Fund. Petition at 1 n.1. The DTC grants the 911 Department's request, subject to the conditions detailed *infra* Section II.B.3.b.

State law requires the 911 Department to petition the DTC for approval of certain budgetary expenditures and percentage allocations for funds disbursed from the Fund. In particular, the 911 Department must petition the DTC if: (1) projected total expenditures exceed total expenditures of the previous fiscal year by 10% or more; (2) the Training Grant allocation is at or above 7.5% of the total surcharge revenues of the previous fiscal year; (3) the Support Grant allocation equals or exceeds 31.25% of the total surcharge revenues of the previous fiscal year; (4) the Wireless State Police PSAP Grant allocation equals or exceeds 6% of the total surcharge revenues of the previous fiscal year; (5) an adjustment to the percentage of the prior fiscal year's total surcharge revenues allocated to one or more of the four Incentive Grant categories² results in total projected expenditures for the combined Incentive Grants that exceed the initial total Incentive Grants allocation of \$2,660,294 by 10% or more; or (6) the projected expenditures for the Development Grant exceed the initial total Development Grant allocation of \$7.5 million by 10% or more. G.L. c. 6A, §§ 18B(i)(1)-(5), 18H(c); *see also* *Petition of the State 911 Dep't for Approval of Fiscal Year 2019 Expenditures, Fiscal Year 2020 Dev. Grant Amount, & Fiscal Year 2020 Incentive Grant Reg'l Emergency Commc'n Ctr. Category Amount*, D.T.C. 19-2, Final Order (May 16, 2019) ("19-2 Order") at 3.

State law also requires that expenditures from the Fund by the 911 Department be prudently incurred and:

[A]ssociated with: the lease, purchase, upgrade or modification of primary and regional PSAP customer premises equipment and the maintenance of such equipment; network development, operation and maintenance; database development, operation, and maintenance; training of 911 telecommunicators

² The statute specifies allocations for each Incentive Grant category as follows: (1) for regional PSAPs serving 2 municipalities, 0.5% of the total surcharge revenues of the previous fiscal year; (2) for regional PSAPs serving 3 to 9 municipalities, 1.0% of the total surcharge revenues of the previous fiscal year; (3) for regional PSAPs serving 10 or more municipalities, 1.5% of the total surcharge revenues of the previous fiscal year; and (4) for regional emergency communication centers ("RECCs"), 2.0% of the total surcharge revenues of the previous fiscal year. G.L. c. 6A, § 18B(i)(4).

regarding the receipt and use of enhanced 911 service information; education of consumers regarding the operation, limitation, role and responsible use of enhanced 911 service; grants associated with enhanced 911 service as set forth in subsection (i) and any other grant approved by the [911 Department] associated with providing enhanced 911 service in the commonwealth; the recurring and nonrecurring costs of communication services providers in providing enhanced 911 service in the commonwealth to the extent required by federal or Massachusetts law or regulation or federal or Massachusetts agency decision or order; and other expenses incurred by the [911 Department] in administering and operating the enhanced 911 system in the commonwealth.

G.L. c. 6A, § 18B(f).

Thus, when reviewing 911 Department petitions, the DTC must determine whether the 911 Department's allocations and expenditures are, or will be, prudently incurred. *See Petition of the State 911 Dep't for Approval of Fiscal Year 2017 Expenditures, Fiscal Year 2018 Dev. Grant Amount, Fiscal Year 2018 Incentive Grant Reg'l Emergency Commc'n Ctr. Category Amount, & Fiscal Year 2018 Incentive Grant Reg'l Pub. Safety Answering Points Serving Two Cmtys. Amount*, D.T.C. 17-1, *Final Order* (Apr. 10, 2017) ("17-1 Order") at 3-6; *Petition of the State 911 Dep't for Approval of the Fiscal Year 2011 Dev. Grant Amount, & Fiscal Year 2010 Expenditures*, D.T.C. 10-1, *Order* (Apr. 5, 2010) ("10-1 Order") at 5-6; G.L. c. 6A, § 18B(f).

When examining whether an expense is, or will be, prudently incurred, the DTC assesses whether circumstances, at the time the decision was made, adequately justified the reasonableness of the expense. *See Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc'ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.C. 07-7, *Order* at 7, 9, 19 (Feb. 8, 2008) ("07-7 Order"). The DTC will not substitute its own judgment for that of the 911 Department as to what is reasonably required to perform the 911 Department's statutory obligations, and the 911 Department has the authority to

determine which categories of equipment, training, and support expenditures it will submit to the DTC for approval. *See Investigation by the Dep't of Telecomms. & Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline enhanced 911 servs., relay servs. for TDD/TTY users, commc'ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.E. 03-63-Phase I, *Order* at 16 (July 14, 2003) (finding that although the Statewide Emergency Telecommunications Board ("SETB")³ must "support the reasonableness of its proposed expenditures, the [Department of Telecommunications and Energy ("DTE")⁴] lacks the jurisdiction to tell the SETB what categories of expenditure it is required to propose"). However, even though the 911 Department may make a determination that a certain expense is needed, all expenses must still be prudently incurred. *See 07-7 Order* at 8. Expenses are deemed prudent if they are necessary for the funding of the 911 Department's provision of enhanced 911 services and programs, including disability access programs in the Commonwealth and, at the same time, maintain a stable surcharge level. *See 07-7 Order* at 9; *Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc'ns equip. distribution for people with disabilities, & amplified handsets at pay tels.*, D.T.C. 07-7, *Interim Order* at 7 (Nov. 30, 2007); *Investigation by the Dep't of Telecomms. & Energy to establish a permanent surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc'ns equip.*

³ The SETB was the predecessor agency to the 911 Department and was dissolved on February 1, 2009. *See* 2008 Mass. Acts, c. 223.

⁴ The DTE, the DTC's predecessor agency, was dissolved on April 11, 2007. *See* 2007 Mass. Acts, c. 19.

distribution for people with disabilities, & amplified handsets at pay tels., D.T.E. 06-4, *Order* at 27-28, 35 (Dec. 1, 2006).

Given the potentially competing interests of ensuring modern, robust enhanced 911 services and maintaining a stable surcharge, the 911 Department has the authority to determine what is necessary for the provisioning of enhanced 911 service, but that necessity must be viewed in relation to cost. *See 10-1 Order* at 8; *07-7 Order* at 7. Accordingly, the DTC strives to maintain a reasonable, stable surcharge in order to protect the interests of communications service ratepayers. *See Petition of the State 911 Dep't for Approval of Fiscal Year 2012 Incentive Grant Reg'l Emergency Commc'ns Ctr. Category Amount; State 911 Dep't Emergency Med. Dispatch Grant; & Fiscal Year 2011 Expenditures*, D.T.C. 11-2, *Order* at 4-5 (May 27, 2011) ("*11-2 Order*"). The DTC thus must oversee the costs of provisioning enhanced 911 services, but that oversight is limited to determining whether the 911 Department's expenses are prudently incurred. *See id.*

B. Analysis of Projected Expenditures for FY2020

The 911 Department requests DTC approval of projected expenditures of \$164,225,847 for FY2020. *See* Petition at 2, Exh. A. Since actual expenditures incurred for FY2019 were \$92,825,415, the 911 Department's projected FY2020 expenditures represent an increase of greater than 10% from the previous fiscal year's spending. *See id.* As discussed above, the 911 Department is required to seek approval for projected total expenditures that exceed the total actual expenditures of the previous fiscal year by 10% or more, and the DTC reviews the reasonableness of such requests by inquiring into whether these expenses are, or will be, prudently incurred. *See* G.L. c. 6A, § 18H(c). The 911 Department's projected expenses for FY2020 are broken out into four major cost categories: (a) Administration; (b) Grant Programs;

(c) 9-1-1 Administration and Operation; and (d) Programs. *See* Petition at 4-13, Exh. A. The DTC analyzes the prudence of the projected expenditures in each cost category below and determines that the 911 Department's projected FY2020 expenditures are necessary in order to provide enhanced 911 services and programs, including disability access programs, and are, or will be, prudently incurred.

1. Administration

The 911 Department's projected FY2020 administration expenses include salary costs, agency expenses, and capital projects, totaling \$6,573,075. *See* Petition at 4, Exh. A. The largest line item in the Administration category is Salary Costs, which the 911 Department projects to be \$5,369,354 for FY2020. *Id.* This represents an approximately 9% increase over the FY2019 actual salary costs of \$4,940,702. *Id.* The 911 Department explains that this increase is needed to cover contractual step increases and cost-of-living adjustments required by union contracts. *Id.* at 4.

The second item within the Administration category, agency expenses, is comprised of: (1) Employee Reimbursements; (2) Workers Comp; (3) Administrative Expenses; (4) Operational Supplies; (5) Utilities/Space Rental; (6) Consultant Services; (7) Operational Services; (8) Equipment Purchases; (9) Lease, Maintenance, Repair Services; (10) Building Maintenance, Repairs; and (11) IT Services, Equipment.⁵ *See id.* at 5, Exhs. A & B.

The projected total agency expenses for FY2020 are \$1,203,721 - a roughly 11% decrease from the 911 Department's FY2019 agency expenditures of \$1,355,481. *See id.* at Exh. A. The largest driver of the projected decreases in FY2020 agency expenses is IT expenses, which decreased from \$438,217 spent in FY2019 to \$100,000 projected for FY2020. *See id.*

⁵ These categories and permissible associated expenses derive from the Office of the Comptroller of the Commonwealth, which oversees and implements the Commonwealth's accounting system. *See 17-1 Order* at 10.

Administrative expenses include expenditures such as office supplies, conferences and professional memberships, and indirect costs ancillary to certain other line items. *See Petition of the State 911 Dep't for Approval of Fiscal Year 2017 Expenditures, Fiscal Year 2018 Dev. Grant Amount, Fiscal Year 2018 Incentive Grant Reg'l Emergency Commc'n Ctr. Category Amount, & Fiscal Year 2018 Incentive Grant Reg'l Pub. Safety Answering Points Serving Two Cmtys. Amount, D.T.C. 17-1, Evidentiary Hearing Transcript of Record at 118-19 (Feb. 16, 2017); Office of the State Comptroller, Expenditure Classification Handbook (Nov. 2014), at 4-5 (providing instructions regarding Fringe and Indirect Costs); Exec. Office for Admin. & Finance, Admin. Bulletin: Fringe Benefits, Payroll Taxes & Indirect Costs (ANF 5) (May 1, 2008).*

Capital projects, the final item within the agency expenses category, is projected at \$0 for FY2020, a decrease from \$72,612 in FY2019 for that category. *See* Petition at Exh. A. The 911 Department does not project any new capital project expenditures for FY2020. *See id.* at Exh. B.

The DTC finds that the 911 Department's Administration expenses are necessary in order to provide enhanced 911 services and programs, including disability access programs, and are, or will be, prudently incurred.

2. Grant Programs

Massachusetts law requires the 911 Department to administer several grant programs related to the provision of enhanced 911 services. *See* G.L. c. 6A, § 18B(f), (i). The 911 Department's projected program expenditures for these categories in FY2020 total \$96,286,770.⁶ *See* Petition at 5-7, Exh. A. Massachusetts statute establishes minimum and/or maximum spending levels for several of the 911 Department's grant programs, spending beyond which requires the 911

⁶ In 2018, the DTC approved increases in then-proposed FY2019 grant expenditure amounts for the Development Grant and Incentive Grant PSAPs Three to Nine Communities Category. *18-2 Order*. In 2019, the DTC approved an increase in the RECC grant percentage of previous year's surcharge revenue to 10%. *19-2 Order* at 19-20.

Department to seek DTC approval. *See* G.L. c. 6A, § 18B(i). Even if the 911 Department’s projected expenditures for a particular grant do not exceed the spending minimums or maximums that trigger the requirement for DTC approval pursuant to G.L. c. 6A, § 18B(i), the DTC must determine whether projected spending for these grants in FY2020 will be prudently incurred as a part of its review of the 911 Department’s total proposed expenditures pursuant to G.L. c. 6A, § 18H(c). The DTC reviews the 911 Department’s request for approval of the FY2021 Development grant amount separately below. *See infra* Section II.C.

The 911 Department proposes relatively little change to the FY2020 allocation amounts for the PSAP and RECC Training Grant (“Training Grant”)⁷ and the Support Grant,⁸ as compared to the allocations projected for the previous year. *Compare* D.T.C. 19-2, 911 Petition at Exh. B, *with* DTC IR 1-6. The amounts projected for both grants remain within their respective statutorily prescribed allocations. *See* G.L. c. 6A, § 18B(i)(1), (2). The DTC approved the establishment of the Emergency Medical Dispatch Grant (“EMD Grant”) with an initial allocation of 3% of the total surcharge revenues of the prior fiscal year. *11-2 Order* at 8-12. Projected FY2020 expenditures total

⁷ The Training Grant is used to “reimburse primary, regional and regional secondary PSAPs and regional emergency communication centers for allowable expenses related to the training and certification of enhanced 911 telecommunicators.” G.L. c. 6A, § 18B(i)(1). The General Laws call for the 911 Department to allocate 5% of the prior year’s surcharge revenues to the Training Grant, or other amount determined by the 911 Department and approved by the 911 Commission but not less than 3.75% of the prior year’s surcharge revenues. *Id.*

⁸ PSAP and RECC Support Grant funds are “disbursed according to a formula that weighs both population served and 911 call volume.” G.L. c. 6A, § 18B(i)(2). This grant reimburses: “primary, regional and regional secondary PSAPs and [RECCs] for allowable expenses related to enhanced 911 telecommunicator personnel costs, and the acquisition and maintenance of heat, ventilation and air-conditioning equipment and other environmental control equipment, computer-aided dispatch systems, console furniture, dispatcher chairs, radio consoles, and fire alarm receipt and alert equipment associated with providing enhanced 911 service; regional PSAPs and [RECCs] for allowable expenses related to the acquisition and maintenance of public safety radio systems; regional secondary PSAPs for allowable expenses related to PSAP customer premises equipment maintenance; and primary, regional, and regional secondary PSAPs and [RECCs] for any other equipment and related maintenance associated with providing enhanced 911 service as approved by the [911 Department].” *Id.* The General Laws call for the 911 Department to allocate 25% of the prior year’s surcharge revenues to the Support Grant, or other amount determined by the 911 Department and adopted by the 911 Commission but not less than 18.75% of the prior year’s surcharge revenues. *Id.*

1.5% of FY2019 surcharge revenues, below the initial allocation. *See* DTC IR 1-6. The DTC determines that projected FY2020 expenditures for the Training, Support, and EMD Grants are necessary for the 911 Department to meet its statutory obligations and finds that these projected expenditures are, or will be, prudently incurred.

In FY2018, as a part of the Support and Incentive Grant Guidelines, the State 911 Commission authorized an additional incentive program to provide funding for local PSAPs to upgrade systems in order to be capable of receiving wireless calls directly (“Wireless Direct Grant”). *See 19-2 Order* at 10. The objective is to shorten response times for local police, fire, and emergency medical services dispatch. *Id.* The 911 Department projects FY2020 expenditures for the Wireless Direct Grant are \$5,425,000. Petition at Exh. A. The 911 Department noted that this Wireless Direct Grant amount is not included in the Support Grant for FY2020, but will be included starting in FY2021. Tr. at 94. Under G.L. c. 6A, § 18D(c), the 911 Department is charged with “develop[ing] and maintain[ing] a statewide plan for the implementation and maintenance of enhanced 911 service” including “routing of 911 wireless calls to primary and regional PSAPs.” The DTC finds that the expenditures for the Wireless Direct Grant are necessary for the 911 Department to carry out its statutory duties and are prudently incurred, and accordingly approves them.

The 911 Department projects spending the same percentage of the previous year’s surcharge revenue on the Wireless State Police Grant as it did in FY2019. *Compare* D.T.C. 19-2, 911 Petition at Exh. B, *with* DTC IR 1-6. This grant remains within the statutorily prescribed range. G.L. c. 6A, § 18B(i)(3).

Projected FY2020 spending on Incentive Grants is comparable to FY2019 projections. *See* Petition at Exh. A. For each such grant, the proposed FY2020 expenditures are within the statutorily

prescribed allocations and do not require separate DTC approval under G.L. c. 6A, § 18B(i)(3) and (4).⁹ The DTC finds that these expenditures are, or will be, prudently incurred.

The 911 Department projects \$15 million in FY2020 spending for the Development Grant, the same projection as for FY2019, although only \$3.56 million was spent in FY2019.¹⁰ *See* Petition at Exh. A. The 911 Department also projects FY2020 expenditures of \$24,605,721.56 in the Development Grant Rollover line item which covers grants awarded in prior fiscal years but not yet disbursed. *See id.* The PSAP Development Grant is designed to support PSAP regionalization. *See* G.L. c. 6A, § 18B(i)(5). Regionalization is one way of achieving the goal of maintaining an efficient and consistent enhanced 911 service. *See id.*; Petition at 7; *18-2 Order* at 10-11. Many of the projects funded by this grant are complex and take place over multiple fiscal years, and thus the projection includes spending that the 911 Department committed to prior to the current fiscal year. *See* Petition at 7. In the previous proceeding, the DTC approved the 911 Department's projected \$15 million FY2020 Development Grant allocation. *See 19-2 Order* at 11. The 911 Department was required to seek DTC approval of this allocation prior to FY2020 because the amount exceeded the initial funding allocation of \$7.5 million by more than 10%. *See id.*; G.L. c. 6A, § 18B(i)(5). The DTC again notes that this line item allocation has doubled since the initial allocation, and again encourages the 911 Department to demonstrate savings produced in other line items because of PSAP regionalization, particularly given the small portion of the allocation to this line item that was spent in FY2017, FY2018, and FY2019. *See 18-2 Order* at 31-32; *19-2 Order* at 11; *infra* Section II.C; Petition at Exh. A. The DTC finds that, given the goal of increased regionalization and the

⁹ As with other grants, although the percentage allocations remained the same from FY2019, the projected dollar amounts increased because the 911 surcharge increased in FY2019, thus increasing surcharge revenues.

¹⁰ The DTC addresses the 911 Department's proposed FY2021 Development Grant allocation amount *infra* Section II.C.

attendant efficiencies and related expected savings, the 911 Department's FY2020 proposed expenditures on the Development Grant are, or will be, prudently incurred.

The DTC determines, for the reasons discussed above, that the 911 Department's projected grant expenses for FY2020 are necessary in order to provide enhanced 911 services and programs, including disability access programs, and are, or will be, prudently incurred.

3. 9-1-1 Administration & Operation

The third category of projected FY2020 expenses is "911 Administration and Operation," which the 911 Department projects to be \$58,591,001. Petition at Exh. A. The vast majority of spending in this category is allocated to Next Generation 911 ("NG911"), including a portion of the cost of a total overhaul of the statewide radio infrastructure which began in FY2018 and will continue until FY2024. *See id.* at 8-9, Exh. A. As discussed below, the DTC approved this upgrade in 2018. *See generally* 18-2 Order. The DTC acknowledges and echoes the comments of the Attorney General that the radio infrastructure project began to experience delays unrelated to available funding, beginning in 2019. *See generally* Comments of the Attorney General (May 1, 2020). With the elimination of the E911 Support line item since FY2018 as the E911 system has now been retired and replaced by the NG911 system, and with the increase to the radio infrastructure line item, overall projected FY2020 spending of \$58,591,001 in this category is below the amount originally projected for FY2019, \$71,191,912, but above the actual FY2019 expenditures of \$29,135,829. *See* Petition at Exh. A. As discussed below, the DTC determines the 911 Department's projected 911 Administration and Operation expenses for FY2020 are, or will be, prudently incurred, subject to the conditions discussed herein.

a. *NG911*

The 911 Department began its transition to NG911 in 2009 in response to its mandate to “review and assess new communications technologies that may include, but are not limited to, wireless, video, broadband, and IP-based applications that may serve as the next generation 911 technology platforms, consistent with FCC decisions and federal law.” G.L. c. 6A, § 18B(h). In August 2014, after issuing a Request for Response (RFR) and undergoing a detailed evaluation process, the 911 Department entered into a five-year contract with General Dynamics Information Technology (“GDIT”) for NG911 products and services. *See 18-2 Order* at 11-12. This contract term ended on August 3, 2019, and this contract was assigned to Comtech NextGen LLC on April 29, 2019. *See* Petition at 8. Deployment of the NG911 system was completed in FY2018, and all PSAPs are now operating on this system *Id.* Projected spending on both recurring and non-recurring NG911 costs is based upon the 2019 contract. *See id.* at 9. Projected non-recurring NG911 costs in FY2020 include the establishment of a third data center,¹¹ replacement of digital logging recorders, and construction of diverse entrances for larger PSAPs.¹² DTC IR 1-10. The 911 Department continues to work with its NG911 vendor towards the implementation of the third data center and states that much progress has been made. *Id.* However, the data center cannot yet handle the call volume in the event of the failure of the other two data centers. *Id.* The DTC finds that the projected FY2020 recurring expenses related to NG911 are contractual, and that both the recurring and non-recurring expenses are necessary to achieve the 911 Department’s statutorily mandated goals. These FY2020 expenditures therefore are, or will be, prudently incurred.

¹¹ The third data center, to be located in Virginia, will act as a geographically diverse emergency backup in case of long-term power outage or other emergency situation that may impact one or both of the data centers in the Commonwealth. *19-2 Order* at 13 n.10.

¹² The term “diverse entrance” refers to an alternative wired pathway for information to enter the PSAP, in case of an accident or emergency that may impair the primary pathway(s). *19-2 Order* at 13 n.11.

b. *Statewide Radio Infrastructure*

The 911 Department projects that it will spend \$5,047,174 in FY2020 on the ongoing overhaul of the Statewide Radio Infrastructure system. *See* Petition at Exh. A. The Commonwealth of Massachusetts Interoperable Radio System (“CoMIRS”) is an existing state-wide interoperable radio network that serves as the primary communications tool for many public safety first responders including the Massachusetts State Police. *See id.* at 9-10. As such, PSAPs utilize the CoMIRS network to quickly and efficiently dispatch and relay emergency 911 information to first responders. *See id.* Because of PSAPs’ direct reliance on CoMIRS and the fact that CoMIRS is used for 911 dispatch, the DTC has ruled that certain dispatch-related costs of the CoMIRS network are appropriately reimbursed by the Fund. *See 18-2 Order*. However, the 911 Department has confirmed that CoMIRS is a mixed-use radio network with uses outside 911 dispatch by definition. *See* DTC 18-2, Order on Motion for Reconsideration (Sept. 4, 2018) (“*18-2 Order on Reconsideration*”) at 10-11. Indeed, the record in the instant proceeding also shows interest from non-public safety municipal users. *See* Tr. at 31:9-32:6. In the *18-2 Order*, the DTC approved the 911 Department’s request to temporarily increase the 911 surcharge so as to provide funding for a needed upgrade to the CoMIRS network. The DTC found the expenditure was related to 911 dispatch because the upgrade from an analog to a digital platform would address critical deficiencies that exist in the current radio network and would allow CoMIRS to better perform its 911 dispatch-related functions. *See 18-2 Order* at 15. The DTC did not, however, approve the use of the surcharge for those portions of CoMIRS which are not directly related to 911 services. *See, e.g., 18-2 Order on Reconsideration* at 6-11.

In this proceeding, the 911 Department informed the DTC that the CoMIRS project has changed significantly. To begin, the scope of the project has been expanded to include more

network users than initially envisioned, and has grown to provide a new digital platform that will have greater capacity, expanded coverage, and more efficient radio spectrum usage. *See* AG RR-2. Additionally, under a recently memorialized Interdepartmental Service Agreement (“ISA”), control of the CoMIRS project has been transferred from the Executive Office of Public Safety and Security (“EOPSS”) to the Executive Office of Technology Services and Security (“EOTSS”). *See* G.L. c. 7D, §§ 1, 3 (including public safety radio services within EOTSS’s jurisdiction).

While the Department does not question the efficacy of these changes to the CoMIRS project, the changes do present certain obstacles to the DTC’s ability to discharge its statutory obligation to oversee expenditures from the Fund. For example, the CoMIRS project is no longer simply an upgrade to existing infrastructure, but rather a long-term plan to build and operate a statewide, secure, digital, interoperable radio network. Further, the 911 Department will neither own nor control the CoMIRS network, but merely will use the Fund to pay for the 911 dispatch-related portion of the CoMIRS system. DTC Supplemental RR-1. Accordingly, additional steps must be taken to provide the ongoing reporting needed to ensure that the surcharge is used only to cover expenses associated with those 911-related services provided under G.L. c. 6A, §§ 18A to 18J. *See 18-2 Order on Reconsideration.*

In order to ensure that 911 surcharge funds are not used on CoMIRS expenses unrelated to 911, the DTC directs the 911 Department to develop, to the extent it has not already done so, detailed formal guidance to EOTSS on how to determine whether an expenditure is related to 911 dispatch. This guidance should be as specific as possible and include examples of appropriate and inappropriate uses. Where the guidance relies upon statutes or DTC Orders, the 911 Department should include its understanding of the practical application of that statute or

Order to actual spending decisions. The 911 Department is directed to submit a copy of this guidance to the DTC as soon as it is finalized and no later than the statutory deadline for the 911 Department's FY2020 annual report due to the DTC under G.L. c. 6A, § 18H(b).¹³ The DTC also directs the 911 Department to include in its annual reports going forward, detailed information on compliance with these guidelines, including a detailed account of CoMIRS project updates, a detailed list of current fiscal year CoMIRS expenditures separate from its general operational expenditures, and a detailed list of funding sources for the CoMIRS project including the total CoMIRS cost and the funding contribution from each source. Finally, consistent with the 911 Department's commitment during this proceeding, the DTC directs the 911 Department to forward a copy of the quarterly report due to it from EOTSS under the entities' ISA, as amended, beginning this quarter and continuing every subsequent quarter thereafter. *See* DTC RR-2; Tr. at 86. The 911 Department's decision to so significantly invest in the CoMIRS project has created a great deal of public interest in the stability of the surcharge in the long-term. The sunlight provided by timely and detailed disclosure of CoMIRS-related expenditures assures that the 911 Trust and related surcharge are being prudently managed.

Subject to and consistent with the findings and conditions herein, the DTC finds that the 911 Department's proposed FY2020 expenditures on the CoMIRS project are, or will be, prudently incurred.

c. Map Data

The 911 Department projects \$2,211,417 in FY2020 spending on Map Data, similar to the spending level in recent years. *See* Petition at Exh. A. The 911 Department has an ISA with

¹³ Subject to the submission of this guidance, the DTC otherwise approves the 911 Department's request to treat the Petition as satisfying its annual reporting obligation for FY2020. *See supra* note 1; Petition at 1 n.1.

the Massachusetts Office of Geographic Information (“MassGIS”) under which MassGIS provides updated, synchronized mapping data and information to the 911 Department for use by PSAPs. *See id.* at 8. The 911 Department explains that this expense “is part of the core component of the GIS data used in support of the Next Generation 911 system.” *Id.* Specifically, MassGIS has acquired aerial imagery used for verification of streets and structures, and will work with an outside vendor to identify the roofline of every structure in the Commonwealth and provide an outline of every building; this information will be incorporated into updates to emergency service zones, which are used to route 911 calls to the correct PSAP. *Id.* The 911 Department states that the services used in support of Next Generation 911 “consist of updated, synchronized mapping data and information and maintenance for the database and aerial imagery, and updates to the emergency services zones.” *Id.* The DTC finds that these projected Map Data expenses are, or will be, prudently incurred.

d. *Wireless Center*

The 911 Department has taken over responsibility for receiving wireless 911 calls that in the past would have been routed to one of two State Police wireless PSAPs. *See* Petition at 10. The 911 Department has consolidated the operations of these two wireless PSAPs into one location in Framingham. *See id.* In FY2020, the 911 Department’s Framingham Wireless PSAP has processed 641,826 calls. *See* DTC IR 1-12(b). The 911 Department has also testified that as the local PSAPs continue to take more wireless calls directly, the dedicated wireless PSAPs will eventually handle a smaller percentage of overall 911 call volume, so spending on this line item would be steady or expected to decrease in the upcoming years. *See 19-2 Order* at 16. Projected spending on the Wireless Center remained roughly steady in FY2020 from actual FY2019 spending and is less than the 911 Department’s projected spending in FY2019. *See* Petition at

Exh. A. The DTC finds that projected spending for the Wireless Center is, or will be, prudently incurred.

In sum, the DTC finds that the 911 Department's FY2020 911 Administration and Operation projected expenses are necessary to achieve the 911 Department's statutory goals of maintaining public safety, the provisioning of enhanced 911 services and programs, including disability access programs, and establishing NG911. Therefore, the DTC finds that these projected expenditures for FY2020 are, or will be, prudently incurred.

4. Disability Access and Other Programs

The final category of projected expenses in FY2020 is for the Disability Access Programs, for which the 911 Department projects \$2,775,000 in expenditures. *See* Petition at Exh. A. This category comprises line items for training, public education, SCPE, Relay, and CapTEL. *Id.* The projection for this category indicates an increase from FY2019 actual expenditures, which totaled \$1,957,195, but a decrease from FY2019 projected spending which totaled 3,220,560. *Id.* The 911 Department projected an increase from actual FY2019 spending because of the projected increases in the training, SCPE, Relay, and CapTEL categories. *Id.* The projections are equal to or below projected FY2019 expenditures. *Id.* The DTC finds that the 911 Department's projected FY2020 expenses associated with these programs are necessary in order to provide enhanced 911 services and programs, and are, or will be, prudently incurred.

5. Conclusion

The DTC determines that the 911 Department's projected FY2020 expenditures are reasonable and are, or will be, prudently incurred, consistent with the directives outlined herein. Accordingly, the DTC approves the expenditures pursuant to G.L. c. 6A, § 18H(b) and (c).

C. Review of FY2021 Development Grant Amount

The 911 Department seeks approval of its proposal to increase the Development Grant allocation to \$18 million for FY2021. *See* Petition at 13-14. The 911 Department projected expenditures of \$12 million for FY2018, \$15 million for FY2019, and \$15 million for FY2020, with projected Rollover Development Grant expenses for FY2020 of \$24,605,721.56. *See id.* at Exh. A; *19-2 Order* at 17. State law requires the 911 Department to obtain DTC approval of any adjustment in the Development Grant that increases the initial funding allocated to the Development Grant, \$7.5 million, by 10% or more. G.L. c. 6A, § 18B(i)(5).

The Development Grant was established by statute to “support the development and startup of regional and regional secondary PSAPs and [RECCs], including the expansion or upgrade of existing regional and regional secondary PSAPs.” *Id.* The purpose of the Development Grant is to “maximize effective emergency 911 and dispatch services as well as regional interoperability.” *Id.* In accordance with statutory requirements, the 911 Department has established guidelines regarding “[t]he eligibility for criteria, amount and allocation of funding” with the approval of the State 911 Commission. *Id.*; *see also 17-1 Order* at 14. On January 30, 2020, the State 911 Commission voted unanimously to authorize the 911 Department to seek DTC approval of an \$18 million allocation amount for FY2021. *See* Petition at 14.

The 911 Department continuously receives funding requests that far exceed the total amount allocated to the grant. *See 19-2 Order* at 18; *17-1 Order* at 27-28. For FY2020, the 911 Department has received Development Grant requests totaling \$27,744,951, almost twice the amount allocated in FY2019 to the grant and nearly four times the amount initially allocated. *See* Petition at 14. The 911 Department states that, as of the date of the Petition, 36 PSAPs have become regionalized through either a regional PSAP or an RECC since the Development Grant program began, and that

it expects at least 13 additional PSAPs to regionalize over the next five years. *See* Petition at 7-8.¹⁴ Further, statutory changes since the creation of the Development Grant have facilitated municipalities' efforts to establish regional PSAPs and RECCs through the creation of regional 911 emergency communication districts. *See* 2014 Mass. Acts, c. 500 (codified at G.L. c. 6A, §§ 18O-18V (2015)).

The 911 Department states that regionalized PSAPs and RECCs enable more efficient and effective use of resources and improve public safety for the residents they service. *See* Petition at 14. For instance, combined emergency communication resources “allows for increased staffing” and “for increased coordination of a region’s limited emergency response resources.” *Id.* This permits 911 telecommunicators “to more effectively interact with the public while gathering essential call information,” and it permits “more efficient response to both routine requests for mutual aid and major disasters.” *Id.* The DTC finds that the 911 Department’s requested Development Grant allocation amount is necessary to meet its statutory obligation to maximize effective 911 services and regional interoperability, and that expenditures related to this funding level will be prudently incurred. Accordingly, the DTC approves the Development Grant allocation of \$18 million for FY2021.

D. Analysis of Projected Revenues

Fund revenues are generated primarily from a surcharge that is “imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system.” G.L. c. 6A, § 18H(a); Petition at 3-4. The Fund’s projected annual surcharge revenue is derived by multiplying the average number of monthly subscribers by the

¹⁴ Those 13 PSAPs are Paxton, Dracut, Norton, Easton, Hanson, Monson, East Longmeadow, Hampden, Ashby, Mendon, Chelsea, Hanover, and Ware. *See* DTC IR 1-13; DTC RR-5; Tr. 110-112.

surcharge to produce the projected monthly surcharge revenue.¹⁵ *See* Petition at 3-4. This averaged monthly revenue is then reduced by 1.0% to account for a carrier administrative fee. *See id.* at 4. The adjusted monthly revenue is then multiplied by twelve to get the annual projected surcharge revenue for each fiscal year. *See Petition of the State 911 Dep't to Adjust the E911 Surcharge*, D.T.C. 15-2, Final Order (June 18, 2015) at 7 (“15-2 Order”). The 911 Department projects surcharge revenues of \$160,115,177 for FY2020, \$161,439,482 each year for FY2021 through FY2023, and \$139,017,332 for FY2024. *See* Petition at Exh. B. For each year, the projected total revenue also includes earned interest, based on an estimated annual rate of 2.11%, from the portion of the Fund that the 911 Department invests.¹⁶ *See* Petition at 4; DTC IR 1-19; 15-2 Order at 7-8. The 911 Department has removed the previously included 2% uncollectible rate from the revenue projection. Petition at 4 n.2. During the next two fiscal years, the 911 Department will track the uncollectible rate and any subscriber count discrepancies and make any necessary revenue adjustments based on such tracking in a subsequent fiscal year. *See id.* The DTC approves of this approach to uncollectible revenues. *See, e.g., 19-2 Order* at 21 (recommending that the 911 Department adjust its methodology for calculation of its uncollectible revenue percentage).

E. Stability of the Surcharge and Condition of the Fund

Having addressed the 911 Department’s projected revenues and expenditures and approved an increase to the Development Grant allocations, the DTC next looks to the condition

¹⁵ The 911 Department tracks subscriber count by type of service provider on a monthly basis. *See 18-2 Order* at 22 n.14. The 911 Department averages this subscriber count to determine the overall number of subscribers per month per carrier type. *Id.*

¹⁶ The Fund is managed by the State Treasurer. *See 15-2 Order* at 8 n.9; G.L. c. 29, § 23 (charging the State Treasurer with managing “all cash, funds, or investments under the control or jurisdiction of any state agency”). The Office of the State Treasurer reports the average interest rate for the Massachusetts Municipal Depository Trust each year. *See 15-2 Order* at 8 n.9.

of the Fund and the long-term prospects for stability of the surcharge. *See* Petition at 1 n.1; G.L. c. 6A, § 18H(b). The DTC strives for surcharge stability but only to the extent that the surcharge sufficiently covers prudently incurred 911 Department expenses. *See* G.L. c. 6A, § 18H(a). The Fund is projected to end FY2020 with a balance of \$143,340,359. *See* Petition at Exh. A. Maintaining the \$1.50 surcharge through FY2023,¹⁷ the 911 Department projects that the balance of the Fund at the end of each fiscal year will remain between and \$144 million and \$96 million through FY2024. *See* Petition at Exh. B. This is substantially higher than the balances projected in recent years. *See 19-2 Order* at 21-22; *18-2 Order* at 29-30; D.T.C. 18-2, Petition at Exh. C.

The 911 Department is entitled to carry a surplus in the Fund. *See 15-2 Order* at 35. Although a sizeable surplus has been prudent in recent years given the implementation and deployment of the NG911 system, and may be prudent during the period of the CoMIRS upgrade, such a large surplus may not be necessary moving forward. *See id.*; *18-2 Order* at 30; *19-2 Order* at 22. The DTC encourages the 911 Department to consider the necessity of the projected surplus, and notes its requirement that the 911 Department file a petition for review of the surcharge no later than calendar year 2023 to affirm the health of the Fund and the sufficiency of the surcharge. *18-2 Order* at 30; *19-2 Order* at 22; *see also* G.L. c. 6A, § 18H(b).

III. ORDER

Accordingly, after hearing, notice, and due consideration, it is:

ORDERED: That the 911 Department's proposed FY2020 expenditures are APPROVED subject to the conditions herein; and it is

¹⁷ The surcharge is set to remain at \$1.50 through Dec. 31, 2023, and then to decrease to \$1.00 on Jan. 1, 2024. *See 18-2 Order* at 33.

FURTHER ORDERED: That the 911 Department's proposed adjustment to the Development Grant allocation amount for FY2021 is APPROVED; and it is


FURTHER ORDERED: That the 911 Department file the CoMIRS guidance to EOTSS detailed herein as soon as the guidance is finalized and no later than the statutory deadline for the 911 Department's FY2020 annual report due to the DTC under G.L. c. 6A, § 18H(b); and it is

FURTHER ORDERED: That, subject to the aforementioned timely submission of the CoMIRS guidance to EOTSS detailed herein, the Petition satisfies the requirement of G.L. c. 6A, § 18H(b) that the 911 Department file an annual report on the financial condition of the Enhanced 911 Fund for FY2020; and it is

FURTHER ORDERED: That the 911 Department include in its annual reports under G.L. c. 6A, § 18H(b) going forward, detailed information on compliance with the aforementioned CoMIRS guidance to EOTSS detailed herein, including a detailed account of CoMIRS project updates, a detailed list of current fiscal year CoMIRS expenditures separate from its general operational expenditures, and a detailed list of funding sources for the CoMIRS project including the total CoMIRS cost and the funding contribution from each source; and it is

FURTHER ORDERED: That the 911 Department forward a copy of the quarterly report due to it from EOTSS under the entities' ISA, as amended, starting this quarter and continuing every subsequent quarter thereafter.

By Order of the DTC,



Karen Charles Peterson
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.